

Where the mortgaged premises consist of several government subdivisions which have been used together as one farm and which cannot be sold separately without injury to the parties interested, they may be sold as a single tract. *Maxwell v. Newton*, 65 W 261, 27 NW 31.

297.09 History: R. S. 1849 c. 121 s. 9; R. S. 1858 c. 154 s. 8; R. S. 1878 s. 3531; Stats. 1898 s. 3531; 1925 c. 4; Stats. 1925 s. 297.09.

The mortgagee or his assigns may purchase the premises if they act in good faith. The sale is not shown to be unfair because the land sold for less than its real value, especially if the mortgagor is given an opportunity to redeem by paying his debt. *Maxwell v. Newton* 65 W 261, 27 NW 31.

The facts showed that the mortgagee did not act fairly and in good faith in making the sale. *Newman v. Ogden*, 82 W 53, 51 NW 1091.

297.10 History: R. S. 1849 c. 121 s. 10; R. S. 1858 c. 154 s. 10; R. S. 1878 s. 3532; Stats. 1898 s. 3532; 1925 c. 4; Stats. 1925 s. 297.10.

The sheriff may make the certificate though the sale was made by the undersheriff of his predecessor. *Morrissey v. Dean*, 97 W 302, 72 NW 873.

297.11 History: R. S. 1849 c. 121 s. 11; R. S. 1858 c. 154 s. 11; R. S. 1878 s. 3533; 1891 c. 303 s. 2; Stats. 1898 s. 3533; 1925 c. 4; Stats. 1925 s. 297.11.

Recital in the certificate of sale that a deed would not be issued until 2 years after the sale does not invalidate a deed issued after expiration of that time. Failure to attach a seal to the certificate is not a fatal defect. *Hayes v. Frey*, 54 W 503, 11 NW 695.

The court cannot abrogate the provisions of secs. 3533 and 3534, R. S. 1878, by allowing redemption on the payment of a less sum. *Schroeder v. Richardson*, 101 W 529, 78 NW 178.

A bona fide holder of a mortgage given after foreclosure sale who redeems therefrom is entitled to a deed to complete the sale, and the deed will vest in the grantee all the title of the mortgagor at the time of making the first mortgage, and will cut off all further claim under such first mortgage. *McLean v. Hoehle*, 98 W 359, 74 NW 120.

297.12 History: R. S. 1849 c. 121 s. 19; R. S. 1858 c. 154 s. 19; R. S. 1878 s. 3540; Stats. 1898 s. 3540; 1915 c. 153; Stats. 1915 s. 3533-1; 1925 c. 4; Stats. 1925 s. 297.12.

A bona fide holder of a mortgage given after sale on foreclosure who redeems from such sale is entitled to a deed which will vest in him all the title of the mortgagor at the time the first mortgage was executed and cut off all further claim to such first mortgage. *McLean v. Hoehle*, 98 W 359, 74 NW 120.

297.13 History: Stats. 1898 s. 3533a; 1925 c. 4; Stats. 1925 s. 297.13; 1965 c. 126.

Revisers' Note, 1898: This is taken from section 16, chapter 81, Revised Statutes of Minnesota of 1878, and is proposed as a wise provision for the protection of lien creditors.

297.14 History: R. S. 1849 c. 121 s. 12; R. S. 1858 c. 154 s. 12; R. S. 1878 s. 3534; Stats.

1898 s. 3534; 1915 c. 153; 1925 c. 4; Stats. 1925 s. 297.14.

A deed may be made by the officer who made the sale and whose term had expired or by his successor. *Hayes v. Frey*, 54 W 503, 11 NW 695.

A deed made by the successor in office of the sheriff who was designated by name and title of office in the mortgage as the person to make the sale is good. *Morrissey v. Dean*, 97 W 302, 72 NW 873.

297.15 History: R. S. 1849 c. 121 s. 13; R. S. 1858 c. 154 s. 13; R. S. 1878 s. 3535; Stats. 1898 s. 3535; 1913 c. 150; 1925 c. 4; Stats. 1925 s. 297.15.

297.16 History: R. S. 1849 c. 121 s. 14; R. S. 1858 c. 154 s. 14; R. S. 1878 s. 3536; 1887 c. 267; Ann. Stats. 1889 s. 3536; Stats. 1898 s. 3536; 1925 c. 4; Stats. 1925 s. 297.16.

297.17 History: R. S. 1849 c. 121 s. 16; R. S. 1858 c. 154 s. 16; R. S. 1878 s. 3537; Stats. 1898 s. 3537; 1925 c. 4; Stats. 1925 s. 297.17.

Unless there is sufficient testimony to overcome the presumption created by sec. 3537, R. S. 1878, the sale will not be disturbed because the affidavit thereof was not made by the person who actually made the sale. *Maxwell v. Newton*, 65 W 261, 27 NW 31.

The evidence, consisting of the printer's affidavit, the affidavit of the deputy sheriff who made the sale, and the sheriff's deed, was sufficient to prove that the mortgage contained a power and that the proceedings by which it was foreclosed were regular. *Bond v. Carroll*, 71 W 347, 37 NW 91.

297.18 History: R. S. 1849 c. 121 s. 17; R. S. 1858 c. 154 s. 17; R. S. 1878 s. 3538; Stats. 1898 s. 3538; 1925 c. 4; Stats. 1925 s. 297.18.

297.19 History: R. S. 1849 c. 121 s. 18; R. S. 1858 c. 154 s. 18; R. S. 1878 s. 3539; Stats. 1898 s. 3539; 1925 c. 4; Stats. 1925 s. 297.19.

297.21 History: R. S. 1849 c. 131 s. 38; R. S. 1858 c. 154 s. 21; R. S. 1878 s. 3542; Stats. 1898 s. 3542; 1925 c. 4; Stats. 1925 s. 297.21.

297.22 History: R. S. 1849 c. 130 s. 45; R. S. 1858 c. 133 s. 81; R. S. 1878 s. 3543; Stats. 1898 s. 3543; 1925 c. 4; Stats. 1925 s. 297.22.

Where a person is charged with unreasonable solicitor's fees or other costs on foreclosure of a mortgage by advertisement, he may be protected by sec. 3543, R. S. 1878. *Schroeder v. Richardson*, 101 W 529, 78 NW 178.

297.23 History: Stats. 1898 s. 3543a; 1925 c. 4; Stats. 1925 s. 297.23.

Irregularities in a foreclosure proceeding are cured by sec. 3543a, Stats. 1898, where 5 years have elapsed after sale. *Coe v. Rockman*, 126 W 515, 106 NW 290.

CHAPTER 298.

Arbitration.

Editor's Note: Ch. 274, Laws 1931, repealed chapter 298, Stats. 1929. For cases which had relevance to that chapter, consult Wis. Annotations, 1930, pp. 1381-1384.

298.01 History: 1931 c. 274; Stats. 1931 s. 298.01; 1939 c. 57.

Arbitration clauses in contracts will be specifically enforced in a proper case. (Hopkins v. Gilman, 22 W 476, is considered overruled by Kipp v. Laun, 146 W 591.) Depies-Heus Oil Co. v. Sielaff, 246 W 36, 16 NW (2d) 386.

At common law, the entire proceedings of arbitration and award merely constitute a contract between the parties, and the successful party can enforce the award only in the same manner as he can enforce an ordinary contract, with the added advantage that the award may be introduced in evidence and is conclusive as to the matters therein decided so far as they are within the terms of the submission. An attack on an award in a common-law arbitration by the unsuccessful party, before the successful one has attempted to enforce it, is premature. At common law, a mere submission of a controversy to arbitration operates ipso facto as a discontinuance of a pending action thereon, except when the submission expressly provides that the action shall be stayed and not discontinued, so that, in the absence of such a provision, the courts are without jurisdiction over any part of the controversy until brought in by an action to enforce the award begun in the usual way by service of process. Pick Industries, Inc. v. Gebhard-Berghammer, Inc. 262 W 498, 56 NW (2d) 97, 57 NW (2d) 519.

The arbitration involved in the instant case, although not referring to the Wisconsin arbitration act, 298.01 to 298.18, is regarded as a statutory and not a common-law arbitration, in view of the parties' procedure and conduct interpreting their arbitration to be subject to the statutes and not to the common law. Pick Industries, Inc. v. Gebhard-Berghammer, Inc. 262 W 498, 56 NW (2d) 97, 57 NW (2d) 519.

The provision "except as provided in section 111.10" was not intended to limit the power of the employment relations board to deal with violations of clauses in collective bargaining agreements requiring arbitration of future disputes. Dunphy Boat Corp. v. Wisconsin E. R. Board, 267 W 316, 64 NW (2d) 866.

In most situations, whether the union is performing its fiduciary duty of fair representation in an arbitration proceeding presents a question of fact; but where the interests of 2 groups of employees are diametrically opposed to each other and the union espouses the cause of one in the arbitration, then there has been no fair representation of the other group, even though, in choosing the cause of which group to espouse, the union acts completely objectively and with the best of motives. The giving of notice of the arbitration hearing, and an opportunity to intervene, to those employees not being fairly represented in the arbitration by the union, were required as a condition to an award adverse to such employees being binding on them. Clark v. Hein-Werner Corp. 8 W (2d) 264, 99 NW (2d) 132, 100 NW (2d) 317.

Every contract containing an arbitration agreement and subject to Wisconsin law, which does not clearly negate the application of the statute, incorporates the statute and is not to be considered a common-law agreement. Madison v. Frank Lloyd Wright Foundation, 20 W (2d) 361, 122 NW (2d) 409.

See note to 111.70, citing Local 1226 v. Rhineland, 35 W (2d) 209, 151 NW (2d) 30.

Arbitration provisions in collective bargaining agreements. 36 MLR 117.

298.02 History: 1931 c. 274; Stats. 1931 s. 298.02.

This chapter prescribes the exclusive remedy for a person against whom an action has been brought in violation of an agreement to arbitrate, and by providing for a stay pending arbitration thereby implicitly denies the validity of a contention that no action may be brought until arbitration has been had. The defendant could not defeat recovery by pleading the arbitration provision as a defense and proceeding to trial on the merits, for by failing to move for a stay it waived its right to insist on arbitration as a condition precedent to recovery. Schramm v. Dotz, 23 W (2d) 678, 127 NW (2d) 779.

Where defendant demurred on the ground that plaintiff had failed to arbitrate before starting the action, the trial court properly overruled the demurrer but could not also hold that defendant had waived his right to insist on arbitration for laches because of his act of demurring rather than moving for a stay. Saxauer v. Luebke, 33 W (2d) 56, 146 NW (2d) 385.

298.03 History: 1931 c. 274; Stats. 1931 s. 298.03; 1955 c. 366.

298.04 History: 1931 c. 274; Stats. 1931 s. 298.04.

298.05 History: 1931 c. 274; Stats. 1931 s. 298.05.

298.06 History: 1931 c. 274; Stats. 1931 s. 298.06; 1949 c. 262.

298.07 History: 1931 c. 274; Stats. 1931 s. 298.07.

298.08 History: 1931 c. 274; Stats. 1931 s. 298.08.

298.09 History: 1931 c. 274; Stats. 1931 s. 298.09.

The one-year period begins to run with the making of the award, not the filing thereof. An appeal acts as a supersedeas to the running of the period. Pick Industries, Inc. v. Gebhard-Berghammer, Inc. 264 W 353, 59 NW (2d) 798, 60 NW (2d) 254.

Although the supreme court may disagree with the interpretation of the collective-bargaining contract reached by the arbitrator, the court will not substitute its judgment for that of the arbitrator in holding that a sale, merger, or any other transaction involving a work transfer from the defendant employer-corporation was in violation of the contract, since the parties contracted for the arbitrator's settlement of the grievance complained of and that is what they received. Dehnart v. Waukesha Brewing Co. 17 W (2d) 44, 115 NW (2d) 490.

298.10 History: 1931 c. 274; Stats. 1931 s. 298.10.

Mistakes of judgment, facts, or law are not ground for review of or setting aside an arbitration award, as such errors are among the contingencies which parties assume when

they select such tribunals. Mistakes that will void an award are those appearing on its face, or gross mistakes of the arbitrators extraneously appearing as to their powers or duties, which result in real injustice or constructive fraud; and the mistake must so mislead the arbitrators that they did not apply the rules which they intended to apply, so that upon their own theory a mistake was made which has caused the result to be something different from that which they had reached by their reason and judgment. *Putterman v. Schmidt*, 209 W 442, 245 NW 78.

298.11 History: 1931 c. 274; Stats. 1931 s. 298.11.

In a proceeding for the confirmation of an award of arbitrators appointed by the parties to a contract, where none of the conditions prescribed as grounds for vacating or modifying an award were present, and where the arbitrators at most made merely an error of fact or law in awarding interest to the contractor, the trial court had no power to modify the award by striking the item of interest therefrom. *Standard Construction Co. v. Hoeschler*, 245 W 316, 14 NW (2d) 12.

298.12 History: 1931 c. 274; Stats. 1931 s. 298.12.

298.13 History: 1931 c. 274; Stats. 1931 s. 298.13.

298.14 History: 1931 c. 274; Stats. 1931 s. 298.14.

298.15 History: 1931 c. 274; Stats. 1931 s. 298.15.

Under 298.15, Stats. 1951, no appeal lies from an order which denies a motion to vacate an award. *Pick Industries, Inc. v. Gebhard-Berghammer, Inc.* 262 W 498, 56 NW (2d) 97, 57 NW (2d) 519.

298.17 History: 1931 c. 274; Stats. 1931 s. 298.17.

298.18 History: 1931 c. 274; Stats. 1931 s. 298.18.

CHAPTER 299.

Procedure in County Court in Small Claims Type Actions.

299.01 History: 1961 c. 519, 614, 684; Stats. 1961 s. 299.01; Sup. Ct. Order, 14 W (2d) vii; 1965 c. 507 s. 5 (2); 1965 c. 560; 1967 c. 201; 1969 c. 284.

A cognovit judgment must be taken in accordance with the procedure prescribed in 270.69 rather than the procedure for small claims type actions prescribed in ch. 299. 59.42, 271.04 and 271.21, regarding fees and costs, are applicable. 52 Atty. Gen. 60.

299.02 History: 1961 c. 519; Stats. 1961 s. 299.02; 1965 c. 560.

299.03 History: 1961 c. 519, 618; Stats. 1961 s. 299.03.

299.04 History: 1961 c. 519; Stats. 1961 s. 299.04; 1969 c. 284.

299.05 History: 1961 c. 519, 643; Stats. 1961 s. 299.05; 1969 c. 284.

Small claims practice. Boden, 47 MLR 38.

299.06 History: 1961 c. 519, 618; Stats. 1961 s. 299.06; 1969 c. 284.

299.06 (2) gives authority to the trial judge in the proper exercise of his discretion to insist on appearance of a party in person or by attorney, but it does not make it mandatory that the judge dismiss the action or hold against the offending party if the provisions of the statute are violated. *Littleton v. Langlois*, 37 W (2d) 360, 155 NW (2d) 150.

See note to sec. 2, art. VII, on judicial power generally, citing 54 Atty. Gen. 49.

299.07 History: 1961 c. 519; Stats. 1961 s. 299.07.

299.08 History: 1961 c. 643; Stats. 1961 s. 299.08; 1963 c. 37; 1969 c. 392.

The state does not pay any suit tax under 299.08, Stats. 1965. 55 Atty. Gen. 57.

299.10 History: 1961 c. 519; Stats. 1961 s. 299.10.

299.11 History: 1965 c. 560; Stats. 1965 s. 299.11; 1969 c. 284.

299.12 History: 1965 c. 560; Stats. 1965 s. 299.12; 1969 c. 284.

Small claims practice. Boden, 47 MLR 38.

299.14 History: 1961 c. 519; Stats. 1961 s. 299.14; 1965 c. 560.

299.16 History: 1961 c. 519, 643; Stats. 1961 s. 299.16; 1963 c. 37; 1965 c. 252; 1965 c. 560 s. 7 (1); 1969 c. 284.

299.20 History: 1961 c. 519; Stats. 1961 s. 299.20; 1963 c. 343.

299.205 History: 1961 c. 519; Stats. 1961 s. 299.205; 1963 c. 407.

299.21 History: 1961 c. 519, 618, 643; Stats. 1961 s. 299.21; 1965 c. 390, 560; 1967 c. 201; 1969 c. 125, 255, 284; 1969 c. 392 ss. 67g, 67r.

Legislative Council Note, 1969: Sub. (2) is amended to make all appeals from a trial by jury to the supreme court.

Sub. (5) is amended to limit appeals to the circuit court to the trial record in county court. If a new trial is ordered it would be held in county court. In all appeals to the circuit court under this bill, the trial would be one in which the trial had been to the court as all jury cases would be appealed to the supreme court. [Bill 7-S]

299.215 History: 1963 c. 37; Stats. 1963 s. 299.215.

299.22 History: 1961 c. 519; Stats. 1961 s. 299.22.

299.225 History: 1963 c. 37; Stats. 1963 s. 299.225.

299.23 History: 1961 c. 519; Stats. 1961 s. 299.23.

299.24 History: 1961 c. 519, 618; Stats. 1961 s. 299.24; Sup. Ct. Order, 14 W (2d) vii; 1963 c. 407.

The statutes governing the docketing of small claims judgments rendered in county courts are discussed in 52 Atty. Gen. 157.